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Filing date: **07/17/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194679
Party	Defendant DeMarcus J. Freemon
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Signature	/Herbert T. Patty/
Date	07/17/2012
Attachments	Motion_to_Resume_Opposition.pdf (2 pages)(78161 bytes) EXHIBIT A.pdf (1 page)(113995 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/514,179
Published in the *Official Gazette* on December 29, 2009

JOHN PHILLIPS AVLON,
an individual

Opposer,

v.

DEMARCUS FREEMON,
an individual

Applicant.

Opposition No. 91194679

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT’S MOTION TO RESUME OPPOSITION PROCEEDING

On July 12, 2012, Opposer’s attorney of record, Robert Barz of K&L Gates filed a motion for suspension for settlement with consent to the Trademark Trial and Appeal Board (the “Board”). In the motion, Opposer’s attorney stated that “John P. Avlon **has secured the express consent of all other parties to this proceeding** for the suspension and resetting of dates requested therein” (emphasis added).

Applicant submits to the Board that Applicant neither gave Opposer consent nor stipulated to suspension of the opposition proceeding for a settlement. Opposer’s attorney, Robert Barz, sent an email to Applicant’s attorney, Herbert T. Patty, on July 12, 2012 requesting consent to file a consent motion to suspend for settlement negotiations. In response, Herbert T. Patty **denied** the request via email the same day as Opposer’s attorney’s request for consent. See Exhibit A.

Applicant’s denial of Opposer’s request for suspension of the opposition proceeding was clear. Applicant moves for the Board to resume the opposition. Opposer’s attorney clearly understood that Applicant’s attorney denied consent for the motion and Opposer’s attorney

sought to mislead the Board by stating that “Opposer secured the consent of all other parties to this proceeding” knowing full well that Applicant did not consent to said motion.

According to TBMP 510.02(a), “[i]f an adverse party has not consented, the filing may still be made via ESTTA, but the filer should select the ‘general filings’ category from the drop down menu instead of the ‘consent motions’ option.” Opposer’s motion for suspension for settlement **with consent** was filed improperly and with the intent to deceive the Board.

CONCLUSION

For all the foregoing reasons, Applicant DeMarcus Freemon respectfully requests that the Board reverse its decision and resume this opposition proceeding. Further, Applicant requests that the Board subsequently dismisses this opposition proceeding entirely, with prejudice, because Opposer’s attorney sought to mislead the Board regarding Applicant’s consent to the motion for suspension.

DATED this 17th day of July, 2012

Respectfully submitted,

DEMARCUS FREEMON

By: /Herbert T. Patty/
His Attorney

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EXHIBIT A

Google

Herbert Patty, Esq. 0 + Share

Gmail

COMPOSE

Inbox
Starred
Important
Sent Mail
Drafts

Circles

Personal
More

Invite a friend

Give Gmail to:

Send Invite 50 left

Preview Invite

Barz, Robert J. Still working on getting a signed agreement this week, but do I have your con... Jul 12 (5 days ago)

htpattylaw
to Marcus

htpattylaw
to Robert

Jul 12 (5 days ago)

Bob, we do not consent to a motion to suspend the opposition proceeding. My client, Demarcus Freeman, will be available through tomorrow end of business to sign the agreement.

Thanks

On Thu, Jul 12, 2012 at 7:37 AM, Barz, Robert J. <Robert.Barz@klgates.com> wrote:
Still working on getting a signed agreement this week, but do I have your consent to file a consent motion to suspend for settlement negotiations with the TTAB?
Bob

Adwords

People (2)

Barz, Robert J.

Add to circles

Show details

Ads - Why these ads?

Capital One® Venture Card
Get double miles on every purchase
Plus, earn 10,000 bonus miles.
www.CapitalOne.com

Civil Motion Writer
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